IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 6287 of 2007(W)

OS.252/2004 of ADDL.MUNSIFF COURT, ALAPPUZHA
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PETITIONER:

JIBU MATHEW, VADAYIL HOUSE,
THATHAMPILLY, ALAPUZHA.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

ST.MICHAELS CHURCH,
THATHAMPILLY, ALAPUZH,
REPRESENTED BY ITS VICAR.

BY ADV. SRI.JOHN JOSEPH VETTIKAD
SRI.SABU GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.NO.252/04 ON THE FILE OF MUNSIFF COURT, ALAPPUZHA.

EXT.P2: COPY OF THE STATEMENT OF WITNESS LIST AND DOCUMENT LIST.

EXT.P3: COPY OF THE OBJECTION FILED BY THE RESPONDENT.

EXT.P4: COPY OF THE ORDER DATED 3.7.06.

EXT.P5: COPY OF THE JUDGMENT DATED 22.8.06.

EXT.P6: COPY OF THE ORDER DATED 21.12.2006 IN O.S.252/04.

RESPONDENTS EXHIBITS:

EXT.R1(A): COPY OF THE ORDER OF THE MUNSIFF COURT, ALAPPUZHA DATED 13.01.2006.

EXT.R1(B): COPY OF THE JUDGMENT IN WRIT PETITION NO.1908/06 DATED 20.1.06.

EXT.R1(C): COPY OF THE JUDGMENT IN WRIT PETITION No.2501/2006 DATED 27.1.2006.

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No.6287 of 2007

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Dated this the 5th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the Additional Munsiff, Alappuzha in O.S.No.252/2004. The present writ petition is against the refusal of the court to summon the document and also the witnesses. This Court as per its judgment in W.P.(C).No.20613/2006 directed the court below to consider whether those documents are to be produced and witnesses to the summoned. The learned Munsiff by the detailed order found it as relevant and therefore declined the prayer. I have heard the counsel for both sides. The suit is one for mandatory injunction and prohibitory injunction. The plaint schedule property is having an extend of 23 cents of land and permission was granted to construct a building in the plaint schedule property by virtue of a decision in 1896 of 1.10.1928. Now the whole point revolves upon the question whether the permission granted is a revocable licence or irrevocable licence. The five documents sought to be summoned are (i) St. Thomas Law (ii)

Thirusabha charitham (iii) Golden Jubilee Smaranika (iv) Thirukarmmangalkkulla vadi sadhanam (v) Bible. As far as the Bible is concerned it is available with all and so nobody not to be directed to produce a copy of the Holy instrument. The learned Munsiff found that the other documents are irrelevant for the purpose of determination of the controversies between the parties. The learned counsel for the writ petitioner submits that such a finding even without seeing the documents is wholly unsustainable and therefore the learned Munsiff should have directed those documents to be produced and consider whether they are relevant and then proceeded with the matter This court is also not in a position to say what are the contents of those books without seeing it. The learned counsel for the petitioner submits that he wants to rely on those books to establish the factum of the incompetency of the person to revoke the licence and also to establish regarding the irrevocable nature of the licence. I feel when such a contention is raised and when such a contention goes to the root of the dispute between the parties, it is not correct to shut out evidence and stating that they are

irrelevant even without seeing these documents. The learned counsel for the respondent had brought to my notice the decision of this Court reported in **Rugmani v. Addl. Sub Judge (1997 (1) KLT 729)** where this Court had when the jurisdiction is to be exercised under Article 227 of the Constitution of India. It is laid down therein that only in case of grave dereliction and violation of law these articles will be exercised that too sparingly. I may like to point out that if the document sought to be summoned are really relevant for a proper determination of the controversy between the parties and if such documents are refused to be summoned by the court below it amounts to dereliction of the the duty cast on the court and in such circumstances the powers under Article 227 has to be exercised. Therefore, I find that this writ petition is maintainable. But at the same time it is also to be said that the intention of the defendant should not be to make a parade of high dignitaries of the Church before the court. It is not a welcomed practice at all. Therefore, in order to properly find out the crux of the the matter I direct the court below to summon the four documents

shown in the earlier paragraph of the judgment and it can be produced by an agent or anybody and thereafter, after hearing the learned counsel for the 3rd defendant and the plaintiffs counsel the court may find out whether it has to be marked or further evidence has to be let in to substantiate those contention. It is only after the court gets convinced that the evidence of witnesses are necessary the court need summon them or examine them through commission so as to avoid embarrassment to them. With these observations the writ petition is disposed of. Needless to say that the expenses for summoning the documents have to be met by the party who wants to produce the same before the court.

M.N.KRISHNAN,JUDGE

dvs